

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ANTHONY MENDES  
AND DORIS MENDES,

Plaintiffs,

v.

CENDANT MORTGAGE,

Defendant.

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C. A. No.: 05-11765-DPW

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION  
TO STRIKE THE AFFIDAVIT OF DORIS MENDES

Plaintiffs, Anthony and Doris Mendes, hereby submit their opposition to Defendant's Motion to Strike the Affidavit of Doris Mendes. Briefly stated, the motion should be denied because: (1) Ms. Mendes' affidavit is based on her personal knowledge and (2) Ms. Mendes' mother has submitted an affidavit indicating that Mrs. Mendes' averments are accurate.

DISCUSSION

In her affidavit, Ms. Mendes avers:

1. My mother had the ability to gift to me a significant sum of money in 2001.
2. She would have gifted me enough money to ensure that I and my husband, Anthony, could fund a ten percent deposit and closing costs on a property which we intended to purchase.
3. The prices as to such properties could exceed three hundred thousand dollars.
4. My mother recently gifted my brother \$50,000 to purchase a home.

Mrs. Mendes possessed the personal knowledge necessary to make the averments set forth in her affidavit. As to paragraph one, Doris Mendes knew that her mother had owned real estate for several years. She had no reason to believe that her mother had obligated herself to pay any additional debt on the property. Accordingly, she knew that her mother possessed the ability to make a significant gift. D. Mendes Dep., p. 24. (Attached as Ex. A).

As to paragraph two, Doris Mendes' mother had gifted her money concerning her potential purchase of the Chilson Avenue property. D. Mendes Dep., p. 24. Doris Mendes had requested this amount because she understood that this amount would be sufficient to close the loan. As to paragraph three, the price of the Chilson Avenue property exceeded \$300,000. Pl. Summ. J. Opp., p. 3. As to paragraph four, Doris Mendes saw her mother gift \$50,000 to her brother.<sup>1</sup>

Doris Mendes' Mother Will Verify That The Affidavit Is Accurate.

If the court desires, Doris Mendes' mother will submit an affidavit indicating that her daughter's affidavit is accurate.

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<sup>1</sup> Mrs. Mendes will supply an affidavit as to these issues if the court desires.

CONCLUSION

Based on the above, plaintiffs request that Cendant's Motion to Strike the Affidavit of Doris Mendes be denied.

ANTHONY AND DORIS MENDES,

By their attorney,  
LAW OFFICE OF CHRISTOPHER J. TROMBETTA

\s Christopher J. Trombetta  
Christopher J. Trombetta (BBO #556923)  
310 North Main Street, Suite 6  
Mansfield, MA 02048  
(508) 339-5900

December 22, 2006

CERTIFICATE OF SERVICE

I, Christopher J. Trombetta, do hereby certify that on December 22, 2006 a copy of the foregoing document has been served via first class mail on opposing counsel in this action.

\s Christopher J. Trombetta  
Christopher J. Trombetta

Doris Mendes

09/08/2006

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Volume: I

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Exhibits: 1-7

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss Superior Court

CA No. B05-809

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ANTHONY MENDES and DORIS MENDES,

Plaintiffs,

vs.

CENDANT MORTGAGE,

Defendant.

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DEPOSITION OF DORIS MENDES

September 8, 2006

10:18 a.m.

Foley & Lardner

111 Huntington Street

Boston, Massachusetts

Reporter: Nancy L. LaCivita

Doris Mendes

09/08/2006

24

1 A. Two thousand --

2 Q. No. Read right across.

3 A. "Sign of purchase and sales agreement."

4 Q. Did you make a deposit of \$8000 with this  
5 purchase and sale agreement?

6 A. Yes.

7 Q. How did you make that deposit?

8 MR. TROMBETTA: I will object to the  
9 form. Do you mean where did the money come?

10 Q. How did you make the \$8000 deposit?

11 A. My mother gave me a gift.

12 Q. How much was the gift?

13 A. \$5000.

14 Q. What is your mother's name?

15 A. Julia Laredo.

16 Q. Where did the other \$3000 come from?

17 A. I had my savings from my work. I had some  
18 money put away. I don't remember. This is -- I'm not  
19 going to track all that, you know.

20 Q. I just want you to tell me what you remember.

21 So we have the \$8000 deposit was -- strike that - the  
22 \$8000 deposit included a \$5000 gift from your mother?

23 A. Yes.

24 Q. But you don't recall where the other \$3000